

2009 CarswellOnt 429,

2009 CarswellOnt 429

Macan v. Municipal Property Assessment Corp., Region No. 15

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A. 31, as amended

In the matter of a complaint with respect to taxation year 2008 on premises known municipally as 1199 Haig Boulevard, CON 2 SDS PT LOT 7

Mike Macan, Assessed Person/Complainant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

I. Oliveira Member

Heard: October 27, 2008

Judgment: January 23, 2009

Docket: WR 72664

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

Counsel: R. **Baranowski** (Agent), for Assessed Person / Complainant

S. Futa, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

Generally — referred to

s. 1(1) "current value" — referred to

s. 19(1) — referred to

s. 19.2(1) ¶ 1 [en. 2004, c. 7, s. 3(1)] — referred to

2009 CarswellOnt 429,

s. 40(19) — referred to

s. 44(2) — referred to

I. Oliveira Member:

1 This complaint came before the Assessment Review Board on October 27, 2008 in the City of Mississauga.

Issue

2 The issue before the Board for determination is whether the assessment of the subject property is incorrect. Mr. **Baranowski**, representative for the complainant, takes the position that the subject property's assessment, in comparison to five similar properties located in the same vicinity, is incorrect. Based on these similar properties he requests an assessment reduction from \$1,220,000 to \$816,000. Mr. **Baranowski** further takes issue with the existence of hydro towers in the proximity but suggested no current value adjustments nor requested a further assessment reduction than the above stated.

3 Mr. Futa, on behalf of the Municipal Property Assessment Corporation (MPAC), informed the Board that, as a result of a property inspection by another assessor, the quality class of construction was downgraded from 8.0 to a 7.5 quality class, which equates to an assessment reduction of \$141,000, thus reducing the assessment from \$1,220,000 to \$1,079,000. Minutes of Settlement were prepared but rejected by the complainant. MPAC's position is that the assessment, as recommended, is correct for the 2008 taxation year.

Decision

4 The Board, based on the evidence presented at the hearing, reduces the assessment from \$1,220,000 to \$835,000 for the 2008 taxation year.

Reasons for Decision

The Law:

5 In making a decision in this matter, the Board is governed by section 1 and subsections 19(1), 19.2(1) 5, 44(2) and 40(19) of the *Assessment Act (Act)*.

6 Section 1 defines current value:

"**current value**" means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer.

7 Subsection 19(1) of the *Act* states:

19(1) Assessment based on current value. - The assessment of land shall be based on its current value.

8 Subsection 19.2(1) of the *Act* states:

19.2(1) Valuation days. — Subject to subsection (5), the day as of which land is valued for a taxation year

is determined as follows:

1. For the 2006, 2007 and 2008 taxation years, land is valued as of January 1, 2005.

9 Subsection 44(2) of the *Act* states that:

44(2) Reference to similar lands in the vicinity. — For taxation years before 2009, in determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.

10 Subsection 40(11) of the *Act* provides that:

40(19) Board to make determination. — After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

Background:

11 The subject property is a detached, two storey, single family residential dwelling, built in 2007, with a total building area of 4,105 square feet and an unfinished basement area of 2,332 square feet. The lot size is 35,607 square feet or .81 acres. The quality class of construction is 7.5.

12 The assessor informed the Board that due to an inspection of the property in April 2008, the quality class of construction was changed from 8.0 to 7.5, which results in an assessment reduction from \$1,220,000 to \$1,079,000. The Minutes of Settlement prepared by MPAC were rejected by the complainant.

Complainant's Evidence and Arguments:

13 Mr. **Baranowski**, the complainant's representative, presented into evidence a Statement of Issues and five comparable properties. The main issues are:

- The subject property is affected by its proximity to huge hydro towers and 240,000 volts (high voltage lines) going down to the Lakeview Generation Station;
- In 2007, MPAC issued a supplementary assessment notice in the amount of \$929,000. The property owner filed a Request for Reconsideration disputing the supplementary notice. Subsequently, MPAC issued Minutes of Settlement to reduce the supplementary assessment from \$929,000 to \$788,000, and to reduce the overall assessment from \$1,220,000 to \$1,079,000 for the 2008 taxation year. The supplementary Minutes of Settlement for 2007 and the Minutes of Settlement for 2008 were both rejected by the complainant.
- The proposed decrease in assessment is strictly based on a change of the quality class from 8.0 to 7.5.

14 The complainant's suggested similar properties in the vicinity are as follows:

- 1528 Haig Boulevard — The structure, built in 1989, has a total building area of 4,766 square feet and a lot size of 21,747 square feet. The quality class is 7.5. It is assessed at \$968,000 or at \$203 per square foot;
- 1520 Haig Boulevard — The structure, built in 1992, has a total building area of 5,831 square feet and a lot size of 21,815 square feet. The quality class is 7.5. It is assessed at \$1,126,000 or at \$193 per square

foot;

- 1279 Haig Boulevard — The structure, built in 2008, has a total building area of 3,659 square feet and a lot size of 12,700 square feet. The quality class is 7.5. It is assessed at \$783,000 or at \$213 per square foot;
- 1577 Northmount Avenue — The structure, built in 2006, has a total building area of 3,200 square feet and a lot size of 20,989 square feet. The quality class is 7.0. It is assessed at \$688,000 or at \$215 per square foot;
- 1467 Myron — The structure, built in 2007, has a total building area of 4,180 square feet and a lot size of 20,989 square feet. The quality class is 6.5. It is assessed at \$735,000 or \$175 per square foot.

15 It is Mr. **Baranowski's** position that these five similar properties support his request for an assessment reduction from \$1,220,000 to \$816,000 based on the average assessed value of \$199 per square foot. Mr. **Baranowski** further stated that these properties are the best indicator of value in that they are not only similar to the subject and but they are located on the same street or in the immediate vicinity

16 Mr. Macan, the complainant, also appeared before the Board.

17 He testified as to his frustrations with MPAC and his great difficulty not only in understanding the assessment process but also in finding information on comparable properties sold in his area at or near January 2005 as requested by MPAC's representative. "The problem lies with the fact that while MPAC has the same information at their fingertips". Mr. Macan doesn't "even have internet, which makes the obtaining of information very difficult". Mr. Macan further testified:

...there have been no properties sold in my area ...all of the sold ones have been in an area that is called Mineola East and Mineola West ... which brings us to the reasons I feel a reconsideration is needed or proof that you (MPAC) have been correct in your findings.

18 Mr. Macan addressed the positives and the negatives of the subject property:

The plus side of my house is that it has a deep lot and backs onto a public golf course; the negative side is that it is Lakeview (area)... when I exit the front door I get to look at the huge hydro tower and 240,000 volts high voltage line going down to Lakeview generation station...

19 It is Mr. Macan's position that MPAC's suggested recommendation is out of line when considering pertinent facts which should not be ignored, such as the hydro towers, the location (a transitional area with a mix of the old and new), the lack of sales to support the assessment and the total value paid for the property (the purchase in 1993 for \$253,000 plus the cost of materials for the new home in the amount of \$396,000 in 2007).

MPAC's Evidence and Arguments:

20 Mr. Futa, on MPAC's behalf, tendered into evidence a Property Report containing suggested similar properties in the vicinity:

- 1279 Haig Boulevard — The structure, built in 2008, has a total building area of 3,659 square feet and a lot size of 12,700 square feet or .28 acres. The quality class is 7.5. It is assessed at \$783,000 or at \$213.99 per square foot;

2009 CarswellOnt 429,

- 1534 Haig Boulevard — The structure, built in 1979, has a total building area of 2,835 square feet and a lot size of 25,740 square feet or .66 acres. The quality class is 7.5. It is assessed at \$775,000 or at \$273.37 per square foot;
- 1528 Haig Boulevard — The structure, built in 1989, has a total building area of 4,766 square feet and a lot size of 21,747.75 square feet or .49 acres. The quality class is 7.5. It is assessed at \$968,000 or at \$203.11 per square foot;
- 1520 Haig Boulevard — The structure, built in 1992, has a total building area of 5,831 square feet and a lot size of 21,815.50 square feet or .49 acres. The quality class is 7.5. It is assessed at \$1,123,000 or \$193.11 per square foot;
- 1610 Northmount Avenue — The structure, built in 2006, has a total building area of 5,316 square feet and a lot size of 21,420 square feet or .49 acres. The quality class is 8.0. It is assessed at \$1,291,000 or at \$242.85 per square foot.

21 Notwithstanding the fact that MPAC's suggested similar properties show an average assessed value of \$224 per square foot, it is Mr. Futa's contention that MPAC's similar properties clearly support the subject's recommended assessment of \$262.85 per square foot for the subject property. Mr. Futa argues that the difference in the assessed values lies with the subject's lot size (.81 acres), which is much larger than that of the properties contained in the property report.

Board's Analysis and Conclusions:

22 The *Act* requires the assessment of property to be at its current value. The best evidence of current value is a sale of the subject property close to the valuation date. The valuation date for 2006, 2007 and 2008 taxation years is January 1, 2005.

23 There is no sale of the subject property that the Board can rely upon so the Board must look at the sales evidence of comparable properties to determine current value.

24 Both parties agree that there are no sales, which occurred within the relevant time period to assist the Board in determining the current value of the property. The complainant's and MPAC's evidence is based on the assessment of similar properties in the vicinity in accordance with subsection 44(2) of the *Act*.

25 There is some disagreement, between the parties, with respect to the inclusion of some properties, as similar properties in the vicinity, either because they are of a different style or of a different quality class of construction.

26 After careful review of the suggested similar properties in the vicinity presented by both parties the Board finds that there are three properties which submitted by both the representative for the complainant and MPAC as being similar properties in the vicinity:

- 1279 Haig Boulevard
- 1520 Haig Boulevard
- 1528 Haig Boulevard

2009 CarswellOnt 429,

27 The Board cannot consider 1534 Haig Boulevard as a similar property because the total building area is approximately 31% smaller than the subject and the structure is a one and one half storey (five-split) while the subject is a full two storey structure.

28 The average assessment per square foot for these properties is \$203.40. If the Board applies this value to the total building area of the subject property ($\$203.40 \times 4,105$ square feet) the result is an assessment of \$834,957.

29 The Board agrees with Mr. Futa that the subject's lot is larger than the lots of the properties tendered into evidence. It makes sense to the Board that there may be an added value to a lot of 35,607 square feet versus the average size of the lots for the properties selected by the Board, which is approximately 18,754 square feet. The Board gave Mr. Futa the opportunity three times during the course of the hearing to submit evidence to quantify how the difference in lot size would affect current value and he was unable to provide any evidence as to how the lot size impacts on the current value.

30 While the overall burden of proof to show that an assessment is incorrect lies with the complainant, the Board is of the view that once it is established that an assessment is not correct (in this case it was admitted by MPAC at the start of the hearing) MPAC has a duty to provide evidence to support any new assessment that it submits as being correct.

31 There is no evidence before the Board to show how the difference in lot size impacts the current value of the property. Courts, in the past, have ruled that when in doubt in taxation matters one should always rule in favour of the ratepayer. In this case, the Board finds that the assessment of the subject property should be based on the assessment per square foot of the three properties agreed by the parties to be similar properties in the vicinity except for the lot size.

32 The *Act* does not define similar property in the vicinity and case law has established that properties do not have to be identical to be similar. In the case before the Board, the parties agree that the properties are similar properties in the vicinity except as MPAC points out for the lot size. The Board is satisfied that they are similar because they are on the same street as the subject property, are of the same quality class and have similar building sizes. The Board is satisfied that for the purpose of subsection 44(2) in the case before it, it is reasonable to adjust the assessment based on the three properties that are agreed to be similar. With no evidence to quantify how the lot size affects the value, the Board is satisfied that for the purposes of this case the effect of lot size should be ignored.

33 The Board is not prepared to base its decision on hypothetical assumptions of value that are not supported by the evidence before it.

34 For the above cited reasons the Board reduces the assessment from \$1,220,000 to \$835,000 (rounded) for the 2008 taxation year.

END OF DOCUMENT